

Wilson Trophy Company and Ruth Shell. Case 14–CA–21493

May 13, 1992

DECISION AND ORDERBY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On February 12, 1992, Administrative Law Judge Lawrence W. Cullen issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order as modified.²

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Wilson Trophy Company, St. Louis, Missouri, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Insert the following as paragraph 1(f).

“(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.”

¹The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

²The judge's recommended Order does not include the Board's standard remedial injunction against repetition by the Respondent of “like or related” unlawful conduct. We shall modify the Order to include such language.

Caryn L. Fine, Esq., for the General Counsel.

Ralph Edwards, Esq. and *Michael E. Wilson, Esq.* (*Greenfelder, Hemker & Gale, P.C.*), of Saint Louis, Missouri, for the Respondent.

DECISION**STATEMENT OF THE CASE**

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard before me at Saint Louis, Missouri, on October 2 and 3 and December 9, 1991. The hearing was held pursuant to a complaint issued by the Acting Regional Director for Region 14 of the National Labor Relations Board (the Board) on July 25, 1991. The complaint is based on a charge filed by Ruth Shell, an individual (the Charging Party), on

July 3, 1991. The complaint alleges that Respondent Wilson Trophy Company (the Respondent) violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) by on or about June 20, 1991, advising its employee Ruth Shell that she was prohibited from calling a representative of the Leather Goods, Plastics and Novelty Workers Union, Local No. 160, affiliated with the International Leather Goods, Plastics and Novelty Workers Union, AFL–CIO (the Union) although Respondent does not prohibit other personal calls; by interrogating Ruth Shell as to the reason she had called the Union and advising her she would be terminated if she called the Union again or otherwise became involved in the Union in violation of Section 8(a)(1) of the Act and by on or about June 25, 1991, informing her in writing that she was being discharged and by discharging her because of her union and/or protected concerted activities in violation of Section 8(a)(3) and (1) of the Act. Respondent has by its answer filed on August 8, 1991, denied the commission of any violations of the Act.

On the entire record in this proceeding, including my observations of the witnesses who testified herein, and after due consideration of the briefs filed by the General Counsel and counsel for the Respondent, I make the following¹

FINDINGS OF FACT**JURISDICTION***A. The Business of Respondent*

The complaint alleges, Respondent admits, and I find that at all times material Respondent is and has been a Missouri corporation, with an office and place of business in St. Louis, Missouri, where it is engaged in the manufacture of nonretail sale of trophies and related products, and that during the 12-month period ending June 30, 1991, Respondent in the course and conduct of its business operations purchased and received at its St. Louis, Missouri facility products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Missouri and sold and shipped from its St. Louis, Missouri facility goods and materials valued in excess of \$50,000 directly to points outside the State of Missouri, and that Respondent is now and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

B. The Labor Organization

The complaint alleges, the Respondent admits, and I find that at all times material herein the Union is, and has been a labor organization within the meaning of Section 2(5) of the Act.

C. Facts

Ruth Shell was initially employed as an accounts receivable clerk on February 5, 1991. Her son, Jeff Shell, was employed as a shipping and receiving clerk in the Respondent's plant in late February 1991. The Union represents the employees in Respondent's plant where Jeff Shell is employed. The office workers including Ruth Shell are not represented by a labor organization. A controversy arose among several of Respondent's employees in the plant including Shell's son

¹The following includes a composite of the credited testimony.

concerning the Respondent allegedly hiring new employees at pay rates above those being paid current employees. Jeff Shell asked his mother, Ruth Shell to look into the matter. On June 20, 1991, Ruth Shell attempted to telephone the union business agent and inquire of him whether the Respondent could pay newly hired employees at pay rates above those being paid current employees.

The telephone conversation was overheard by Kathy Miloshewski, a coworker in the same office as Ruth Shell, who was concerned about whether Ruth Shell could discuss wages of employees and who immediately informed Respondent's controller, Charles Martin, of Ruth Shell's telephone call to the union representative. Shell testified that Martin, within 5 minutes of the telephone call entered the office, closed the door and said that Kathy (Miloshewski) had informed him that she (Shell) had called the Union. Shell replied that she had done so. Martin asked why and she told him she "wanted to find out proper procedure and policy on how to handle a problem with the situation that was in the warehouse." Martin asked her what the problem was and Shell told him that Jeff (Shell) had told her "there were people in the warehouse bragging that they were making five dollars an hour." Shell testified, Martin then "pointed his finger at me and he said you are not to call the Union again for any reason or get further involved in the warehouse or I will terminate you because if I find you further involved with the situation, I will terminate you." Martin then left the office.

Following this incident relations between Ruth Shell and Miloshewski deteriorated to the point that they were no longer speaking to each other and Miloshewski was closing and locking the file cabinets where personnel records and money were kept. Additionally, Shell stopped speaking to Martin and cleared her desk of her personal items such as family pictures. In June a memo from Martin was given to each employee asking them how they wished to schedule an upcoming holiday and seeking their return of the memo with an indication of their preferences. On June 24 or 25, Ruth Shell turned in her copy of the memo with her preference indicated thereon and also with notations of spelling errors on the memo. On the morning of June 25, Ruth Shell took a call from Norman Stinger, manager of one of Respondents related companies, concerning a purported error in an invoice he had received for materials purchased from Respondent. According to Ruth Shell he had already talked to an order taker prior to the transfer of the call to her and wanted to speak to Warehouse Supervisor David Wall who normally handled incorrect billing problems. Shell testified that when she told Stinger that Wall was in the warehouse, he demanded she immediately find him and hung up in an irritated manner. She had the invoice in front of her which she had discussed with Stinger and wrote a note to Wall to call Stinger and placed it on his desk. Stinger testified that Shell's manner on the telephone was rude and he then called to complain about the treatment he had received from Shell. Shell thereafter went to lunch and went to a suburban newspaper in an attempt to locate an advertisement she believed she had seen earlier wherein Respondent was advertising for new employees at \$5 per hour but was unable to locate it. Within 10 minutes of her return from lunch Martin came into her office, laid some papers including a termination letter on her desk and told her to read and sign it. It is as follows:

WILSON TROPHY COMPANY P. O. BOX 5996
ST. LOUIS, MO 63134

NOTICE OF TERMINATION

June 25, 1991

On Thursday, June 2(0), at 1:15 p.m., Mrs. Ruth Shell received a verbal warning from her supervisor, Charles R. Martin for her involvement in activities not related to the performance of her job. These activities served to increase an unnecessary disturbance in the workplace. She was told that any additional involvement in these activities would result in her termination from her position.

Since that time, Mrs. Shell's attitude continues to be a disruption in the workplace. she demonstrates an inability to corporate and get along with her co-workers as evidenced by complaints received by management from other personnel in her department. This inability to cooperate and get along extends to management as well. An internal memo was recently circulated in the accounting department with instructions to sign the notice and return it to her supervisor. Mrs. Shell returned the memo with spelling errors highlighted. A complaint was also received from the manager of one of Wilson Trophy Company's related companies.

As management does not feel that the poor attitude demonstrated by Mrs. Shell will improve, it is in the best interest of the Accounting Department and the company in general that her employment with Wilson Trophy Company be terminated. [Emphasis added.]

EMPLOYEE STATEMENT AND SIGNATURE ON PAGE 2

Shell told Martin she did not have an attitude problem, that she had been coming to work, doing her work and had not said anything to anyone since he (Martin) had reprimanded her on June 20. He told her that was part of her attitude problem; she had not been speaking to anyone. This ended the conversation and he told her she had two days to sign the paper and left the office. She left the office and Respondent has not since reinstated her.

Jeff Shell, John Miller, and Bill Martin, all warehouse employees testified concerning rumors going around the warehouse about new hires being brought in at rates of \$5 to \$7 an hour which was more than many current employees were making (i.e., Jeff Shell earned \$4.50 per hour). These rumors were a subject of much discussion and consternation among the employees. Jeff Shell and Miller both talked to Ruth Shell about it sometime between June 10 and 20. She told them to talk to their shop steward and their supervisor about it. Miller talked to shop steward Barbara McGee who said that Respondent could pay anything they wanted above the minimum rate and told him she would need proof to process the grievance. Both Miller and Jeff Shell talked to warehouse supervisor David Wall who alternately told Jeff Shell that no one was being started above \$4.50 per hour and told Miller he did not know what new employees were being started at. Thus dissatisfied with these answers, Jeff Shell and Miller asked Ruth Shell to attempt to find out more. This was what

had precipitated Shell's telephone call to the Union which had been reported to Martin by Miloshewski.

On July 15, Warehouse Supervisor Wall called a meeting among the male employees in the warehouse and told them not to discuss wages among themselves and if they had any questions about wages, to tell him and he and the employee asking the question would go into the office of General Manager Leonard Randall and discuss it with him or according to Wall take it up with shop steward Barbara McGee. Wall testified that there were ongoing discussions about wages and the rumors which he felt were interfering with production and safety and that this was one of several items he discussed with the male employees at the meeting including a lost lift truck key and destruction in the men's bathroom. In late August, or early September Wall told an employee who opened his paycheck, on a Friday payday in the three minute interval between 4:27 p.m., when a bell rings and the 4:30 p.m., quitting time when employees are permitted to get ready to go home, that if the employee opened his paycheck in the building again he would be fired. Wall admitted doing this but testified that he has since been advised that employees can open their paychecks in the building and that his concern was that employees opening their paychecks would slow down the line of employees leaving work at quitting time.

D. Contentions of the parties

The General Counsel contends Shell was verbally reprimanded, interrogated and threatened with discharge on June 20 and discharged on June 25 because of her engagement in protected concerted activities by attempting to call the Union concerning the entry level wage issue about which her son and other employees in the plant were concerned.

Respondent contends that Shell's attempt to call the Union on June 20 was not protected concerted activity and that Shell was merely an interloper trying to cause trouble between the warehouse employees collective bargaining representative and the Respondent. It contends she was discharged because of her poor attitude toward Miloshewski who became upset on June 25, and her poor attitude toward management as evidenced by her highlighting of errors on Martin's memo concerning a holiday, and as evidenced by a complaint received from Stinger.

E. Analysis

I find that the General Counsel has established a prima facie case that the Respondent violated Section 8(a)(1) of the Act by stemming discussions concerning wages among its employees at the July 15, meeting held by Wall and on the August or September occasion when Wall, a 2(11) supervisor threatened employees with discharge if they opened their paychecks on the premises and that Respondent violated Section 8(a)(1) of the Act on June 20, 1991, by disparately prohibiting Ruth Shell from telephoning the Union during working hours while permitting employees to make other personal calls during working hours, by interrogating Ruth Shell concerning her reason for calling the Union, and by threatening her with discharge if she called the Union again or otherwise became involved in the Union. I further find that Respondent has established a prima facie case of a violation of Section

8(a)(3) and (1) of the Act by the June 20 reprimand of Ruth Shell and by the June 25 discharge of Ruth Shell.

Initially the facts in this case are largely not in dispute as the testimony of Ruth Shell, Jeff Shell, John Miller and Bill Martin, was not rebutted by Respondent. The right of employees to engage in concerted activities and collective bargaining with respect to wages is a fundamental Section 7 right guaranteed employees under the Act. If this right is to be a meaningful one employees must have the right to discuss wages as such discussion is essential. *A.L.S.A.C.*, 277 NLRB 1532 (1986); *Blue Cross-Blue Shield of Alabama*, 225 NLRB 1217 (1976); *Jeannette Corp.*, 217 NLRB 653 (1975), *enfd.* 532 F.2d 916 (3d Cir. 1977); *Falls River Savings Bank*, 247 NLRB 631 (1980). In the instant case the evidence is overwhelming based on Miloshewski's reaction to that of wage discussions by Ruth Shell and Martin's immediate interrogation of Shell, issuance of a reprimand, and threat of discharge to her and ultimate discharge of her and Wall's preclusion of the discussion of wages among the warehouse employees and the threats issued by him to an employee for opening his paycheck in the building that Respondent had a policy of precluding the discussion of wages among its employees which was enforced with threats and discipline up to and including termination. I credit the testimony of Ruth Shell, Jeff Shell, John Miller, and Bill Martin that personal discussions of varying kinds were permitted on company time as were personal telephone calls by Respondent's office personnel as corroborated by Miloshewski. It was not until the subject of wages was under discussion and that Shell attempted to call the Union, that Respondent sought to silence its employees. Respondent's position that since its warehouse employees were represented by a union, they could not discuss wages among themselves and that Ruth Shell as an unrepresented office employee was an interloper who could be disciplined for getting involved in wage discussions with employees and taking concerted actions on their belief has no support in Board law as the restriction of wage discussions and concerted activities to union representatives is in contravention of established law and Board policy. I do not credit Wall's testimony that he was merely motivated by productivity and safety concerns when he prohibited wage discussions at the July 15 meeting. Nor do I credit his testimony that he was merely concerned with holding up employees clocking out with his threat of discharge issued to an employee opening his paycheck.

With respect to Ruth Shell's discharge I do not credit Martin that Shell's "attitude" by not talking to office personnel and the incident with the Dallas, Texas branch manager, the incident with Miloshewski becoming upset with Shell's attitude toward her and the highlighting of the spelling mistake in the memo were the real reasons for Shell's discharge. Rather I find that Respondent sought to rid itself of someone it considered an interloper in its relationship with the Union concerning wages and that the principle reason for the discharge of Shell was this unlawful purpose. Moreover, it is clear that the poor "attitude" of Ruth Shell was premised primarily on her reaction to the unlawful interrogation, threat, and the prohibition of Shell from engaging in concerted activities by Martin and Miloshewski's actions toward Shell after the reprimand. It is undisputed that until the time of the unlawful reprimand and threat of discharge of Shell, there had been no dissatisfaction with her work performance

and no prior discipline of her and that Respondent does not contend the actions taken against Shell were based on her work performance.

I accordingly, find that the Respondent has failed to rebut the prima facie case established by the General Counsel by the preponderance of the evidence and has failed to persuasively demonstrate that Ruth Shell would have been reprimanded and discharged in the absence of her protected concerted activities in attempting to contact the union representative concerning the wages of employees in the warehouse, and that Respondent thereby violated Section 8(a)(3) and (1) of the Act by the reprimand and discharge of Ruth Shell. *Roure Bertrand Dupont, Inc.*, 271 NLRB 443 (1984); *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). I find also that Respondent's prohibitions against wage discussions and threats issued to its employees were violative of Section 8(a)(1) of the Act. *Independent Stations Co.*, 284 NLRB 394 (1987); *Meyers Industries*, 268 NLRB 493 (1984) (*Meyers I*), remanded sub nom. *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985) (*Meyers II*).

CONCLUSIONS OF LAW

1. Respondent Wilson Trophy Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent violated Section 8(a)(1) of the Act by prohibiting its employees from engaging in wage discussions, by interrogating and threatening Ruth Shell with discharge for telephoning the Union during working hours while disparately permitting other personal telephone calls to be made by its employees during working hours, and by threatening them with discharge for doing so and for opening their paychecks on its premises.

3. Respondent violated Section 8(a)(3) and (1) of the Act by its reprimand and discharge of its employee Ruth Shell.

4. The above unfair labor practices in connection with the business of Respondent as set out above have the effect of burdening commerce and are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has violated the Act, it shall be ordered to cease and desist therefrom, and to take certain affirmative actions, including the posting of an appropriate notice designed to effectuate the purposes of the Act. Respondent shall rescind its unlawful reprimand and discharge of its employee, Ruth Shell, and offer her full reinstatement to her former position or to a substantially equivalent position if her former position no longer exists and make her whole for all loss of pay and benefits, including seniority and other rights and privileges sustained by her as a result of Respondent's unlawful discrimination against her. Backpay and benefits shall be with interest as computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).² Respondent shall also expunge its records of all references to the unlawful actions taken against Ruth Shell and inform her in writing that this

²Under *New Horizons*, interest is computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendments to 26 U.S.C. § 6621.

has been done and that such unlawful actions will not be used against her in any manner in the future. Respondent shall also preserve all necessary records for computing backpay and benefits and make them available to the Regional Director for Region 14, or his representatives.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

The Respondent, Wilson Trophy Company, St. Louis, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Disparately prohibiting its employees from telephoning the Union during working hours while permitting other personal calls.

(b) Interrogating its employees concerning their reasons for calling the Union.

(c) Threatening its employees with termination if they telephone the Union or otherwise become involved in the Union or engage in protected concerted activities.

(d) Prohibiting its employees from discussing wages or opening their paychecks on its premises and threatening them with discharge if they do so.

(e) Reprimanding and discharging its employees because of their engagement in union or protected concerted activities.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind its reprimand and discharge of its employee, Ruth Shell, offer her full reinstatement to her former position or if her former position no longer exists, offer to reinstate her to a substantially equivalent position. Make her whole for all loss of earnings and benefits sustained by her by reason of its unlawful discharge of her, with interest as prescribed in "The Remedy" and restore all rights and privileges including seniority previously enjoyed by her.

(b) Expunge from its records all references to its unlawful reprimand and discharge of Ruth Shell and inform her in writing that this has been done and that such unlawful acts will not be used against her in any manner.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Saint Louis, Missouri, copies of the attached notice marked "Appendix."⁴ Copies of the notice on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees

³If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁴If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT prohibit our employees from opening their paychecks on our premises, discussing wages, telephoning

the Leather Goods, Plastics and Novelty Workers Union, Local No. 160, affiliated with the International Leather Goods, Plastics and Novelty Workers Union, AFL-CIO or otherwise engaging in union or other protected concerted activities, or threaten them with discharge for doing so.

WE WILL NOT reprimand or discharge our employees because of their engagement in union or other protected concerted activities.

WE WILL NOT in like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL rescind our unlawful reprimand and discharge of Ruth Shell and offer her full reinstatement to her former position or to a substantially equivalent position if this position no longer exists, and will make her whole for all loss of earnings and benefits sustained by her because of our unlawful conduct, with interest, and will restore to her all rights and privileges previously enjoyed in the manner set forth in the remedy section of the decision.

WE WILL expunge from our files any references to the unlawful reprimand and discharge of Ruth Shell and will inform her in writing that this has been done and that said unlawful conduct will not be used against her in any manner because of engagement in union or concerted activities.

WILSON TROPHY COMPANY